

Douglas H. Green
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1200 Nineteenth St., N.W.
Washington, D.C., 20036-2430

[Date Signed: April 7, 1997]

Re: Reproposal of HWIR Waste Rule and Commercial Mixed Waste

Dear Mr. Green:

This letter follows up on discussions that you and Agency staff have had concerning EPA plans to evaluate possible regulatory relief for commercial mixed waste. (For the purposes of this letter, "commercial mixed waste" refers to low-level radioactive hazardous mixed wastes generated by nuclear power plants where such wastes are also subject to regulation under the Atomic Energy Act by the Nuclear Regulatory Commission (NRC) or NRC-Agreement States.)

In a proposed revision to the consent decree for the Hazardous Waste Identification Rule (HWIR) filed in ETC v. Browner, Civ. Nos. 94-2119 and 94-2436 (D.D.C.), on April 7, 1997, EPA has agreed to sign a notice of proposed rulemaking no later than October 31, 1999 that will seek comment on, among other things, an exemption from hazardous waste disposal regulation and other regulatory relief as appropriate for commercial mixed waste.

The scope of such a proposal will in part depend on receiving data on commercial mixed waste from the Edison Electric Institute (EEI) or others. Depending on the completeness of the data, EPA plans to finalize no later than April 30, 2001 a decision about whether, and what type, of an exemption for commercial mixed waste is appropriate.

In light of this rulemaking effort, EPA's Office of Solid Waste (OSW) will recommend in writing to the EPA Regions and the RCRA-authorized States that, until the resolution of the mixed waste rulemaking, they suspend the calling-in or processing of final RCRA Part B permits at power plants subject to regulation under the Atomic Energy Act by the NRC or NRC-Agreement States where the only reason for a Part B permit is the on-site storage of mixed waste, unless there is a particular environmental concern that merits the calling-in of the permit. The purpose of such a suspension would be to avoid expending resources evaluating Part B permits when a mixed waste rulemaking could possibly eliminate the need for such permits. (Such facilities would remain subject to Part A interim status hazardous waste requirements).

Finally, as you know, EPA has issued a policy that treats violations of the "land ban storage restrictions" of section

3004(j) of RCRA that involve relatively small volumes of mixed wastes as a reduced priority for Federal enforcement. The policy is currently in effect through April 1998. Prior to expiration of this policy, EPA will determine whether any shortfall in treatment and/or disposal capacity for mixed wastes is likely to continue beyond April 1998, and, as a consequence, whether any extension of the current enforcement policy is warranted. EPA's planned consideration of an extension to the current policy, however, does not alter the terms of that policy. In particular, please bear in mind that the current policy does not apply to any mixed wastes for which treatment technology and/or disposal capacity is currently available or becomes available during the term of the policy. Nor does it address violations of permitting requirements or other storage regulations.

There may be events which would necessitate a change to this plan for evaluating regulatory relief for commercial mixed waste. If so, we will notify you as soon as practicable.

Sincerely,

Tim Fields
Assistant Administrator (Acting)
Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency

Fred Hansen
Deputy Administrator
U.S. Environmental Protection Agency